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Supreme Court, U.S.
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In The

Supreme Court of the United States

MELANIE LYDIA DACOSTA,

Petitioner,

v.

STANISLAUS NWACHUKWA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether sufficient authority existed to support the district court's holding that the petitioner raised a substantive due process claim because the assault by the public college teacher upon appellant's person in the presence of her classmates was malicious and not intended to restore discipline and petitioner suffered severe injuries as a result of the unwarranted use of force.

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OPINION BELOW

The opinion of the Eleventh Circuit Court of Appeals is published in the Federal Reporter at 304 F.3d 1045 (2002). The opinion of the District Court is published in the Federal Supplement at ___ F.Supp. ___ (200___).

JURISDICTION

The Eleventh Circuit filed its decision on July 18, 2002, and entered an order denying appellant's motion for rehearing on October 10, 2002. This Court has jurisdiction under 28 U.S.C. Section 1254(1) to review the circuit court's decision on this petition for writ of certiorari.

STATUTORY PROVISION INVOLVED

42 U.S.C. Section 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF FACTS

On May 8, 1999, petitioner was a student at Georgia Military College in Union City, Georgia. Respondent was the instructor for petitioner's business class. After the respondent checked his attendance for the May 8, 1999 class, petitioner asked him a question about his teaching method. The respondent did not answer petitioner's question, but he did answer similar questions asked by male students in the class. Petitioner asked another question about respondent's teaching method, and again he refused to answer the question.

Respondent walked out of his classroom, and petitioner followed him to discuss her questions. When respondent saw the petitioner walking behind him, he quickly turned to avoid petitioner and ran back into the classroom where the other students were waiting for instruction. When petitioner attempted to enter the classroom for instruction, the respondent intentionally and maliciously slammed the door in her face. The petitioner's arm went through the glass window that was located on the top portion of the door. While the petitioner's arm was trapped in the broken window and bleeding, the respondent repeatedly slammed the door in her face. Other students screamed for the respondent to stop the assault upon the petitioner. They rushed to her defense and persuaded the respondent to cease the assault upon petitioner. Petitioner's classmates called the police and protected her until the police arrived at the school and arrested the respondent for battery. Petitioner was transported to the hospital for emergency medical treatment for her severe bodily injuries. As a result of the malicious

assault by her college instructor, the petitioner incurred medical expenses in excess of $5,000.00

Petitioner filed her Section 1983 action against respondent claiming that he violated her constitutional substantive due process rights. The respondent moved to dismiss the due process claim on the grounds that the respondent's assault upon petitioner did not support a substantive due process claim. The district court found the respondent's conduct was malicious and not intended to restore discipline and the petitioner suffered severe injuries as a result of the unwarranted use of force by the state employee. The court held that such conduct supported the petitioner's substantive due process claim and denied the motion to dismiss.

The respondent appealed the denial of his motion to the Eleventh Circuit Court of Appeals. The Eleventh Circuit held that the district court did not cite sufficient authority to support its decision concerning petitioner's substantive due process claim. The Eleventh Circuit reversed the district court's decision. The case is now before this Court for consideration of this petition.

REASON FOR GRANTING THE PETITION

1. Sufficient Authority Existed To Support The District Court's Holding That The Petitioner Raised A Substantive Due Process Claim Because The Court Found The Assault By The Public College Teacher Upon Petitioner's Person In The Presence Of Her Classmates Was Malicious And Not Intended To Restore Discipline And The Petitioner Suffered Severe Injuries As A Result Of The Unwarranted Use Of Force By The State Employee.

The district court correctly denied the respondent's motion to dismiss the petitioner's substantive due process claim. The existence of a state tort claim is not a bar to a substantive due process claim in federal court under 42 U.S.C. Section 1983. *Gilmere v. City of Atlanta,* 774 F.2d 1495 (11th Cir. 1985). Congress intended the Section 1983 remedy to be independently enforceable whether or not it duplicated a state tort remedy. *Wilson v. Garcia*, 85 L.Ed.2d 254 (1985).

The nature of a substantive due process claim in the police abuse context was discussed by this Court in *Rochin v. California*, 342 U.S. 165 (1952). The Court explained that "substantive due process is violated when the government engages in actions which 'offend those canons of decency and fairness which express the notions of justice of English-speaking peoples even toward those charged with the most heinous offenses.'" *Id.* at 169. While this Court has generally limited the duty, under the Fourteenth Amendment, of state officials concerning assaults upon private parties to cases where the victim was in the custody of a law enforcement officer, this limit did not

mean there was no constitutional right to be free from assaults committed by state officials outside the custodial setting. *United States v. Lanier*, 520 U.S. 272, n. 7 (1997). Violations which gave rise to a substantive due process claim are necessarily more egregious than those which gave rise to a simple tort action. *Gilmere v. City of Atlanta,* at 1500. "In determining whether the constitutional line has been crossed, a court must look to such factors as the need for the application of force, the relationship between the need and the amount of force that was used, the extent of injury inflicted, and whether the force applied was in a good faith effort to maintain or restore discipline or malicious and sadistically for the very purpose of causing harm." *Id.*

The district court correctly applied the above standard and found "the conduct alleged in the complaint was malicious and not intended to restore discipline in the classroom, and [petitioner] suffered severe injuries as a result of this unwarranted force [upon her person by her public college instructor in the presence of other students in the class]."

The Eleventh Circuit erroneously held that there was no authority cited by the district court to support the court's holding that the petitioner raised a substantive due process claim. In support of its holding, the district court cited *Gilmere v. City of Atlanta*, 774 F.2d 1495, 1500-01 (11th Cir. 1985) (en banc); *Carr v. Tatangelo*, 156 F.Supp. 2d 1369, 1378-79 (M.D. Ga. 2001) (recognizing that the Fourteenth Amendment protects individuals from excessive force by government officials); *Rochin v. California*, 342 U.S. 165, 172 (1952); *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973); *Lassiter v. Alabama A&M Univ.*, 28 F.3d 1146, 1149 (11th Cir. 1994); and *United*

States v. Lanier, 520 U.S. 259, 271 (1997) (noting that in some "instances a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question, even though" the precise conduct in question has not been found unlawful).

The petitioner maintains that the above authority was sufficient to support the district court's holding that the petitioner raised a substantive due process claim because the assault by the public college teacher upon petitioner's person in the presence of her classmates was malicious and not intended to restore discipline and petitioner suffered severe injuries as a result of the unwarranted use of force by the state employee. The holding of the Eleventh Circuit needs to be reviewed by this Court and corrected because it is contrary to the holdings of this Court.

CONCLUSION

This Court should grant the petition for writ of certiorari and reverse the decision of the Eleventh Circuit Court of Appeals and affirm the decision of the Middle District Court of Georgia.

This 8th day of January, 2003.

Respectfully submitted,

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ATTACHMENT "A"

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 02-10960
Non-Argument Calendar

D. C. Docket No. 01-00188-CV-4-DF-5

MELANIE LYDIA DACOSTA,

Plaintiff-Appellee,

versus

STANISLAUS NWACHUKWA,
individually and in his official capacity as college instructor for Georgia Military College,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Georgia

(Filed July 18, 2002)

Before CARNES, HULL and WILSON, Circuit Judges.

PER CURIAM:

Stanislaus Nwachukwa (Appellant), a college instructor at Georgia Military college, appeals the district court's denial of his motion to dismiss Melanie Lydia Dacosta's suit, filed pursuant to 42 U.S.C. § 1983, on the basis of qualified immunity. The district court denied Appellant's motion to dismiss, finding that Dacosta's complaint alleged

a violation of her substantive due process rights under the Fourteenth Amendment to the United States Constitution. Appellant asserts that his conduct, as alleged in Dacosta's complaint, amounts to only a state law tort and does not constitute a substantive due process violation. Appellant further argues that even if the facts alleged do constitute a violation of Dacosta's constitutional rights, there was no clearly established law sufficient to put Appellant on notice that his actions amounted to a violation of those rights. We find that the facts alleged in the complaint are not sufficient to state a claim for a substantive due process violation, and hence reverse the district court.

BACKGROUND

A denial of qualified immunity on a motion to dismiss filed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure is an immediately appealable interlocutory order. *Maggio v. Sipple,* 211 F.3d 1346, 1350 (11th Cir. 2000). We review such a denial de novo. *Id.* When reviewing the denial of a Rule 12(b)(6) motion to dismiss, we accept all well-pleaded factual allegations in the complaint as true and construe the facts in a light most favorable to the non-moving party. *GJR Invs., Inc. v. County of Escambia, Fla.,* 132 F.3d 1359, 1367 (11th Cir. 1998).

The following is a brief summary of the relevant facts, accepting Dacosta's well-pleaded factual allegations as true and construing them in a light most favorable to her. On May 8, 1999, Dacosta attended a business class at Georgia Military College taught by Appellant. Dacosta asked Appellant a question about his teaching method; he ignored her question, though he answered similar questions posed by male students in the class. Dacosta later

asked the same question; this time, Appellant not only failed to answer the question, but walked out of the classroom. Dacosta followed him out the door, seeking to approach Appellant about the question that he had persistently refused to address. Upon seeing that Dacosta had left the classroom herself, Appellant darted back inside the classroom, and slammed the door in Dacosta's face in an effort to deny her reentry to the room. Dacosta held up an arm in an attempt to protect herself from the door; her arm shattered the glass window on the door and became lodged in the cracked pane. Appellant then violently swung the door several times in an attempt to knock Dacosta back from the door. After this effort proved unsuccessful, Appellant reached through the cracked glass pane and shoved Dacosta's face, still trying to forcibly dislodge her arm from the window. At this point, several students in Dacosta's class restrained Appellant until the police arrived and arrested Appellant for criminal battery. Dacosta incurred medical expenses of over $5,000 as a result of the incident.

Dacosta's complaint, filed against Appellant and the Board of Trustees of Georgia Military College, alleged numerous violations of her federal constitutional rights, statutory rights pursuant to 20 U.S.C. § 1621(a), and rights under Georgia tort law. Both Appellant and the Board of Trustees filed motions to dismiss pursuant to Rule 12(b)(6). The district court dismissed all of Dacosta's claims pursuant to these motions, with the exception of her individual claims against Appellant under the Due Process Clause of the Fourteenth Amendment. This appeal follows.

DISCUSSION

In evaluating a claim of qualified immunity, a reviewing court's first task is to determine whether the plaintiff has alleged the deprivation of a cognizable constitutional right. *Conn v. Gabbert,* 526 U.S. 286, 290 (1999). In the instant case, we must first ascertain whether the facts alleged in Dacosta's complaint amount to a violation of Dacosta's rights under the Due Process Clause.

The substantive component of the Fourteenth Amendment's Due Process Clause "prevent[s] government [officials] from abusing [their] power, or employing it as an instrument of oppression." *Collins v. City of Harker Heights,* 503 U.S. 115, 126 (1992) (internal quotation marks omitted). Our substantive due process doctrine is designed to "protect[ ] those rights that are fundamental – rights that are implicit in the concept of ordered liberty." *Skinner v. City of Miami,* 62 F.3d 344, 347 (11th Cir. 1995) (internal quotation marks omitted) (citation omitted). The substantive element of the Due Process Clause protects certain rights not expressly mentioned in the Constitution, such as the right to privacy, from state infringement. *See Planned Parenthood v. Casey,* 505 U.S. 833, 847-49 (1992).

While the Supreme Court has extended protection under the Due Process Clause to a number of rights not explicitly referenced in the Constitution's text, it has cautioned against the open-ended judicial expansion of other unenumerated rights. *City of Sacramento v. Lewis,* 523 U.S. 833, 842 (1998) ("[W]e have always been reluctant to expand the concept of substantive due process.") (internal quotation marks omitted); *Collins,* 503 U.S. at 125 ("[G]uideposts for responsible decisionmaking in this [substantive due process area] are scarce and open-ended.

The doctrine of judicial self restraint requires us to exercise the utmost care whenever we are asked to break new ground in this field.") (citation omitted).

Courts have been notably reluctant to expand substantive due process doctrine to encompass state torts. Rights conferred by state tort law, and adequately protected by that law, "remain largely outside the scope of substantive due process jurisprudence." *Skinner,* 62 F.3d at 347. Substantive due process doctrine is not a "font of tort law to be superimposed upon whatever systems may already be administered by the States." *Paul v. Davis,* 424 U.S. 693, 701 (1976). Indeed, substantive rights "created only by state law (as is the case with tort law and employment law) are not subject to substantive due process protection . . . because substantive due process rights are created only by the Constitution." *McKinney v. Pate,* 20 F.3d 1550, 1556 (11th Cir. 1994) (en banc) (internal quotation marks omitted). Conduct by a government actor that would amount to an intentional tort under state law would only rise to the level of a substantive due process violation if it "shocks the conscience" or interferes with rights "implicit in the concept of ordered liberty" – in other words, only if it affects individual rights guaranteed, explicitly or implicitly, by the Constitution itself. *United States v. Salerno,* 481 U.S. 739, 746 (1987).

In the instant case, Dacosta has alleged intentional battery – a tort under Georgia law. Her right to be free from such a battery is conferred by Georgia law and protected by the Georgia courts. Dacosta cannot point us to any authority suggesting that such conduct, malicious as it may have been, amounted to a deprivation of her rights under the U.S. Constitution, as opposed to a deprivation of her rights under Georgia law. The cases she cites

as authority for her substantive due process claim involve excessive force used by law enforcement officers, and are not applicable to the instant case. *See, e.g., Gilmere v. City of Atlanta,* 774 F.2d 1495 (11th Cir. 1985); *Johnson v. Glick,* 481 F.2d 1495 (2nd Cir. 1973).

The *Skinner* case provides useful guidance in our evaluation of Dacosta's substantive due process claim. In *Skinner,* a group of firefighters pinned a co-worker to the floor of the firehouse and subjected him to a degrading assault as a part of a hazing ritual. *Skinner,* 62 F.3d at 346. The plaintiff argued that such conduct "shocked the conscience" and should give rise to a substantive due process claim. We noted that Skinner had in fact been assaulted, and should be free to pursue remedies for that assault under state law. *Id.* at 347. However, we also pointed out that Skinner could provide no authority for the proposition that his assault amounted to a violation of his constitutional rights, and denied him relief on that claim. *Id.* at 347-48.

In the instant case, Dacosta likewise cannot point to any authority holding that a battery perpetrated by a college teacher upon an adult student rose to the level of a substantive due process violation. In light of the Supreme Court's finding in *Collins* that this area of the law should be developed cautiously, we feel that judicial restraint demands that we find no such violation on these facts. Remedies for batteries of this sort should be pursued in accordance with state law.

CONCLUSION

In order to overcome the defense of qualified immunity at the 12(b)(6) stage, a plaintiff must first assert the

violation of a cognizable constitutional right. Dacosta has not done that in this case. Hence, the district court erred in denying Appellant qualified immunity. Accordingly, we reverse and remand this case to the district court for an entry of judgment in accordance with Appellant's motion for dismissal.

REVERSED AND REMANDED.

United States Court of Appeals
For the Eleventh Circuit

No. 02-10960

District Court Docket No.
01-00188-CV-4-DF-5

MELANIE LYDIA DACOSTA,

Plaintiff-Appellee,

versus

STANISLAUS NWACHUKWA,
individually and in his official capacity as college instructor for Georgia Military College,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Georgia

JUDGMENT

(Filed July 18, 2002)

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgment of this Court.

Entered: July 18, 2002
For the Court: Thomas K. Kahn, Clerk
By: Gilman, Nancy

ATTACHMENT "B"

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA MACON DIVISION

MELANIE LYDIA DACOSTA, Plaintiff, vs. STANISLAUS NWACHUKWA, Individually and in His Official Capacity as College Instructor for Georgia Military College, and BOARD OF TRUSTEES OF GEORGIA MILITARY COLLEGE, Defendants.	:	5:01-CV-188-3 (DF)

ORDER

(Filed Feb. 8, 2002)

Before the Court are the Motions to Dismiss filed by Defendant Trustees (tab #2) and Defendant Nwachukwa (tab #11). Plaintiff has filed suit against Defendants (1) under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause of the Fourteenth Amendment, (2) under 42 U.S.C. § 1983 for a violation of the Due Process Clause of the Fourteenth Amendment, (3) under 20 U.S.C. § 1681 ("Title IX"), (4) under state law, and (5) for injunctive relief. Defendants respond that (1) Plaintiff has failed to state a claim under § 1983 against Defendant Trustees, (2) Defendant Nwachukwa is entitled to qualified immunity for his allegedly unconstitutional conduct, (3) Plaintiff has not properly stated a claim for relief under Title IX, (4) Plaintiff's state law claims are barred by the Eleventh

Amendment as well as the Georgia Tort Claims Act ("GTCA"), and (5) Plaintiff's request for injunctive relief is moot.

I. FACTUAL BACKGROUND

The following is a brief summary of the facts taken in the light most favorable to the non-moving party. On May 8, 1999, Plaintiff was attending a business class at Georgia Military College ("GMC") taught by Defendant Nwachukwa. During the class, Plaintiff raised her hand to ask Defendant Nwachukwa a question about his teaching method. Despite the fact that Defendant Nwachukwa answered similar questions posed by male students in the class, he refused to answer Plaintiff's question. When Plaintiff posed a second question about this matter, Defendant Nwachukwa again refused to answer and walked out of the classroom. Plaintiff followed Defendant Nwachukwa out of the classroom and attempted to approach him about her unanswered question. Upon realizing that she had followed him, Defendant Nwachukwa quickly turned and ran back into the classroom. When Plaintiff attempted to follow Defendant Nwachukwa back inside, he immediately slammed the door in an effort to keep her out of the classroom. In doing so, Plaintiff's arm broke through the glass portion of the door and became trapped. Defendant Nwachukwa then slammed the door repeatedly against Plaintiff in an effort to separate her from the door.

Soon after the incident, the police arrived at the classroom, arrested Defendant Nwachukwa, and charged him with criminal assault and battery. Plaintiff was taken to the hospital for treatment of her injuries. As stipulated

by both parties, Defendant Nwachukwa is no longer employed as a teacher at GMC.

II. DISCUSSION

A. Standard of Review

A court should grant a motion to dismiss under Rule 12(b)(6) only when "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." ***Conley v. Gibson***, 355 U.S. 41, 45-46 (1957). On a motion to dismiss under Rule 12(b)(6), the court's function is not to assess the veracity or weight of the evidence that might be offered in support of the complaint; instead, the court must merely determine whether the complaint is legally sufficient. *See* ***Sherman ex rel. Sherman v. Helms***, 80 F. Supp. 2d 1365, 1368 (M.D. Ga. 2000). In ruling on a motion to dismiss, the court must accept all material facts alleged in the complaint as true, and it must construe all reasonable inferences in the light most favorable to the plaintiff. *See* ***Kirby v. Siegelman***, 195 F.3d 1285, 1289 (11th Cir. 1999). A court evaluating a motion to dismiss for failure to state a claim upon which relief can be granted must focus its analysis on the face of the complaint, but it may also consider any attachments to the complaint, matters of public record, orders, or items appearing in the record. *See* ***Sherman ex rel. Sherman v. Helms***, 80 F. Supp. 2d 1365, 1368 (M.D. Ga. 2000); ***In re Sunbeam Sec. Litig.***, 89 F. Supp. 2d 1326, 1335 (S.C. Fla. 1999) (noting that a court may consider central documents that are referenced in the complaint). However, the court is not required to accept as true the plaintiff's conclusions of law. *See* ***Solis-Ramirez v. United States Dep't of Justice***, 758 F.2d 1426, 1429 (11th Cir. 1985). If the facts alleged in the

complaint would not allow the plaintiff to recover under any possible theory, the motion must be denied, regardless of whether they would allow recovery under the particular theory pleaded by the plaintiff. *See* ***Linder v. Portocarrero***, 963 F.2d 332, 336 (11th Cir. 1992).

B. Title IX Claims[1]

Plaintiff first claim that Defendant Trustees is liable under Title IX. Title IX states, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C.A. § 1621(a) (West 2000). In order to bring a claim under Title IX, Plaintiff must show that (1) Defendant Trustees is a recipient of federal education funding, (2) that Plaintiff was subjected to discrimination because of her gender, and (3) that Defendant Trustees was responsible for that discrimination under Title IX. *See* ***Davis v. Monroe County Bd. of Educ.***, 526 U.S. 629, 638-39 (1999).

Generally, to prevail on a motion to dismiss, a defendant must demonstrate "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." ***Conley***, 355 U.S. at 45-46. A necessary concomitant to this rule is that a plaintiff's

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[1] In her complaint, Plaintiff brought Title IX claims against both Defendants. However, Plaintiff has subsequently conceded that Defendant Nwachukwa is not a proper party to this claim. *See* ***Hartley v. Parnell***, 193 F.3d 1263, 1270 (11th Cir. 1999). Therefore, the Court recognizes that Plaintiff's Title IX claim now lies only against Defendant Trustees.

complaint must set out allegations, which if accepted as true, would provide relief. *See* ***id.; Roe v. Aware Woman Ctr. for Choice, Inc.***, 253 F.3d 678, 680 (11th Cir. 2001). It is true that Fed. R. Civ. P. 8(a) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." However, the Eleventh Circuit has warned that

> [w]hile notice pleading may not require that the pleader allege a specific act to cover every element or allege with precision each element of a claim, it is still necessary that a complaint contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory.

Roe, 253 F.3d at 683 (internal quotation marks omitted). Therefore, "[i]n order to decide whether the complaint made the necessary allegations, [the Court] first look[s] at the elements of a cause of action." ***Id.*** at 680. These allegations must provide a basis from which the Court "can identify each of the material elements necessary to sustain a recovery under some viable legal theory." ***Id.*** at 684. Here, even under the most liberal reading, Plaintiff has failed to allege facts from which all three elements essential to a Title IX claim can be inferred or identified.

The most obvious deficiency in Plaintiff's complaint is the absence of any allegation that Defendant Trustees was responsible (for purposes of Title IX) for any discriminatory conduct of Defendant Nwachukwa. Title IX does not allow recovery for damages against a school for the actions of a teacher "based on principles of *respondeat Superior* or constructive notice." ***Gebser v. Lago Vista Indep. Sch. Dist***, 524 U.S. 274, 285 (1998); *see also* ***Davis v. DeKalb***

County Sch. Dist. 233 F.3d 1367, 1372 (11th Cir. 2000) (noting that "[a] school district must have actual notice [of the discriminatory conduct] before it can be held liable in damages"); ***Floyd v. Waiters***, 133 F.3d 786, 790 (11th Cir.), *vacated and remanded,* 525 U.S. 802 (1998), *reinstated,* 171 F.3d 1264 (11th Cir.) (1999). More specifically, damages under Title IX are limited to an "appropriate person" who

> is, at a minimum, an official of the recipient entity with authority to take corrective action to end the discrimination. Consequently, in cases like this one that do not involve official policy of the recipient entity, we hold that a damages remedy will not lie under Title IX unless an official who at a minimum has authority to address the alleged discrimination and to institute corrective measures on the recipient's behalf has actual knowledge of discrimination in the recipient's programs and fails adequately to respond.

Gebser, 524 U.S. at 290. Therefore, it is essential to a Title IX claim that the plaintiff allege that a defendant's level of responsibility for the alleged conduct amounts to "deliberate indifference to discrimination." ***Id.*** Here, without citing any behavior on the part of Defendant Trustees, Plaintiff's complaint simply states that "[t]he defendants' action and inaction violated plaintiff's federal statutory rights against discrimination based on sex." (Compl. ¶ 23). This allegation in no way alleges that Defendant Trustees knew of action by Defendant Nwachukwa, so as to demonstrate the requisite deliberate indifference.

The Court also notes that, in addition to the above deficiency, Plaintiff's complaint fails to allege that Defendant Trustees received federal funding during the time at

issue. *See* 20 U.S.C.A. § 1621(a); ***Monroe County Bd. of Educ.***, 526 U.S. at 638-39. Because this statutory element is essential to Plaintiff's Title IX claim, and because Plaintiff fails to allege any facts regarding this element, the complaint is deficient regarding Plaintiff's request for relief under Title IX.

The fact that Plaintiff has discussed these elements in her brief is not sufficient in and of itself to withstand Defendant Trustees' motion to dismiss. At no point, even when faced with this motion to dismiss, has Plaintiff sought to amend her complaint, and she cannot indirectly meet this requirement by stating the required allegations for the first time in a brief. Rule 12(b)(6) simply does not permit the Court to consider such allegations that are not part of the complaint. Accordingly, Plaintiff's Title IX claim cannot withstand Defendant Trustees' Rule 12(b)(6) challenge.

C. Section 1983 Claims

1. Claims Against Defendant Trustees

Section 1983 does not allow a municipality to be held liable under the doctrine of respondeat superior, and a plaintiff cannot simply impute the conduct of its employees to the final decision-making body. *See* ***Busby v. City of Orlando***, 931 F.2d 764, 776 (11th Cir. 1991) (per curiam) (noting that a plaintiff must demonstrate that "the alleged racial discrimination . . . occurred pursuant to a custom or policy of [the municipality]"). As the Supreme Court has noted,

> a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a

> government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.

Monell v. Department of Soc. Servs., 436 U.S. 658, 694 (1978); *see also* ***Brown v. City of Margate***, 842 F. Supp. 515, 516 (S.D. Fla. 1995). Therefore, Plaintiff must establish that the violation of her constitutionally protected rights occurred pursuant to a custom or policy, *see* ***Busby***, 931 F.2d at 776; ***Hartley***, 193 F.3d at 1269, or that Defendant Trustees officially sanctioned the actions of an employee who acted in violation of those rights. ***Brown v. City of Fort Lauderdale***, 923 F.2d 1474, 1479-80 (11th Cir. 1991); ***Samedi v. Miami-Dade County***, 134 F. Supp. 2d 1320, 1349 (S.D. Fla. 2001) (noting that "[o]nly a decision maker vested with final authority to create policy can open the government to section 1983 municipal liability").

Here, Plaintiff has failed to allege that she suffered from any violations of her Fourteenth Amendment rights as a result of the policies or customs of Defendant Trustees. Nor has Plaintiff alleged that Defendants Trustees sanctioned any conduct of employees that violated her constitutionally protected rights. As stated in the complaint, Plaintiff was injured as a result of the intentional, unilateral actions of Defendant Nwachukwa. However, Plaintiff has made no allegation that Defendant Trustees knew of any such conduct on the part of Defendant Nwachukwa (or of any other teachers) prior to the incident in question. With no allegations that Defendant Trustees had some policy of allowing its teachers to violate the Due Process Clause of the Equal Protection Clause, or that

Defendant Trustees knew or such conduct and implicitly condoned it by not taking corrective measures, Plaintiff has failed to state a § 1983 claim against Defendant Trustees for which she can obtain relief.

2. Claims Against Defendant Nwachukwa in His Official Capacity

The Eleventh Circuit has recognized that "when an officer is sued under § 1983 in his or her official capacity, the suit is simply another way of pleading an action against an entity of which an officer is an agent." ***Busby***, 931 F.2d at 776 (internal quotation marks omitted); *see also* ***Owens v. Fulton County***, 877 F.2d 947, 951 n.5 (11th Cir. 1989). Here, Plaintiff has brought claims against Defendant Trustees and Defendant Nwachukwa in his official capacity. Because allowing the claim to proceed against both Defendants would be redundant, Plaintiff is barred from asserting this § 1983 claim against Defendant Nwachukwa in his official capacity. *See* ***Busby***, 931 F.2d at 776.

3. Claims Against Defendant Nwachukwa Individually

In contrast to official-capacity claims, a government official can be sued pursuant to § 1983 in his individual capacity. However, a defendant sued in his individual capacity is sometimes entitled to qualified immunity for his conduct. *See* ***Busby***, 931 F.2d at 772. Here, Defendant has properly raised the affirmative defense of qualified immunity, and the Court will examine Plaintiff's individual-capacity claim accordingly.

The affirmative defense of qualified immunity serves to protect government officials in the administration of their official duties. The Supreme Court has recognized the policy that "[r]eliance on the objective reasonableness of an official's conduct, as measured by reference to clearly established law, should avoid excessive disruption of government and permit the resolution of many insubstantial claims." ***Harlow v. Fitzgerald***, 457 U.S. 800, 818 (1982). Therefore, "[q]ualified immunity protects government officials performing discretionary functions from civil trials . . . and from liability if their conduct violates no 'clearly established statutory or constitutional rights of which a reasonable person would have known." ***Lassiter v. Alabama A & M Univ.***, 28 F.3d 1146, 1149 (11th Cir. 1994) (en banc) (quoting ***Harlow***, 457 U.S. at 815). Analysis of the qualified immunity defense involves a two-stage examination. *See* ***Priester v. City of Riviera Beach***, 208 F.3d 919, 926 (11th Cir. 2000). First, the defendant asserting this defense must demonstrate that he was acting within the scope of his discretionary authority at the time of the alleged violation. *See* ***id***. Second, if this showing is made, the plaintiff must prove that the defendant's conduct violated some clearly established right. *See* ***id***. Here, Plaintiff has conceded that Defendant Nwachukwa was acting within the scope of his discretionary authority. Therefore, the Court need determine only whether the conduct violated a clearly established right – a determination that requires Plaintiff to satisfy a two-part inquiry.

In order to establish the violation of a clearly established right, a plaintiff must first demonstrate that she has suffered from the deprivation of an actual and currently cognizable constitutional right. *See* ***Conn v. Gabbert***, 526 U.S. 286, 290 (1999); ***Chesser v. Sparks***, 248

F.3d 1117, 1122 (11th Cir. 2001). If the violation of a currently cognizable right is determined, the plaintiff must then demonstrate that the right was clearly established at the time of the conduct such that a reasonable person would have been put on notice of the constitutional violation. *See* ***Conn***, 526 U.S. at 290; ***Chesser***, 248 F.3d at 1122. This analysis is particularly appropriate on a motion to dismiss. *See* ***GJR Invs., Inc. v. County of Escambia***, 132 F.3d 1357, 1367-68 (11th Cir. 1998); ***Oladiende v. City of Birmingham***, 963 F.2d 1481, 1485 (11th Cir. 1992) (noting that on a motion to dismiss, "the Rule 12(b)(6) defense and the qualified immunity defense become intertwined"). However, to ensure that the asserted conduct violated a clearly established right, the Eleventh Circuit requires plaintiffs to satisfy heightened pleading requirements, above those provided in Rule 8(a). *See* ***GJR Invs., Inc.***, 132 F.3d at 1367 (recognizing a tightening of "the application of Rule 8 with respect to § 1983 cases in an effort to weed out non-meritorious claims, requiring that a § 1983 plaintiff allege with some specificity the facts which make out its claim"). Therefore, it is necessary that a plaintiff provide "[s]ome factual detail" in her complaint such that it will become clear whether Defendant Nwachukwa has violated a clearly established right. ***Id.***

a. <u>Fourteenth Amendment Due Process Claim</u>

Plaintiff alleges that Defendant Nwachukwa's malicious infliction of bodily injury constituted a deprivation of a property interest under the Due Process Clause of the Fourteenth Amendment. *See* ***Gilmere v. City of Atlanta***, 774 F.2d 1495, 1500-01 (11th Cir. 1985) (en banc); ***Carr v.***

Tatangelo, 156 F. Supp. 2d 1369, 1378-79 (M.D. Ga. 2001) (recognizing that the Fourteenth Amendment protects individuals from excessive force by government officials). "'[D]ue process of law' requires an evaluation based on a disinterested inquiry pursued in the spirit of science, on a balanced order of facts exactly and fairly stated, on the detached consideration of conflicting claims, on a judgment not ad hoc and episodic but duly mindful of reconciling the needs both of continuity and of change in a progressive society." ***Rochin v. California***, 342 U.S. 165, 172 (1952) (citation omitted). Applying this broad standard, the Supreme Court has recognized that conduct by a government official that "shocks the conscience" or "offends even hardened sensibilities," may indeed constitute a constitutional deprivation. ***Id***. Additionally,

> the violations which give rise to a substantive due process claim are necessarily more egregious than those which give rise to simple tort actions. . . . "Not every push or shove . . . violates a prisoner's constitutional rights. . . . [Rather] a court must look to such factors as the need for the application of force, the relationship between the need and the amount of force that was used, the extent of injury inflicted, and whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm."

Gilmere, 774 F.2d at 1500-01 (quoting ***Johnson v. Glick***, 481 F.2d 1028, 1033 (2d Cir. 1973)). Here, the conduct as stated in the complaint was malicious and not intended simply to restore discipline in the classroom, and Plaintiff suffered severe injuries as a result of this unwarranted force. Therefore, Plaintiff has sufficiently alleged the violation [of] a currently cognizable right.

Moreover, the Court finds that this right was clearly established at the time of the conduct. Generally, to pierce the shield of qualified immunity, Plaintiff must also demonstrate, in addition to showing the violation of a currently cognizable right, that at the time of the alleged violation case law with "materially similar" facts and circumstances existed that would "truly compel . . . the conclusion for every like-situated, reasonable government agent that what defendant is doing violates federal law *in the circumstances.*" ***Lassiter***, 28 F.3d at 1150. However, as stated in the complaint, it is so clear that the force used by Defendant Nwachukwa was excessive that the existence of a controlling decision with materially similar facts is not a necessary predicate for a denial of qualified immunity. *See* ***United States v. Lanier***, 520 U.S. 259, 271 (1997) (noting that in some "instances a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question, even though" the precise conduct in question has not been found unlawful). Here, slamming the door on a student repeatedly was unwarranted force that clearly exceeded any level of conduct necessary to maintain class discipline, and under these circumstances no reasonable teacher could have had a good faith belief that such conduct would not violate the Due Process Clause of the Fourteenth Amendment. In light of these circumstances, it appears that Defendant Nwachukwa's conduct "[was] so obviously wrong, in the light of pre-existing law, that only a plainly incompetent [teacher] or one who was knowingly violating the law would have done such a thing." ***Lassiter***, 28 F.3d at 1149 (footnote and citations omitted). Because this conduct was objectively unreasonable, the Court finds that this case presents one of those exceptional cases in which a defendant is not entitled to qualified immunity. *See* ***id.***

b. Fourteenth Amendment Equal Protection Claim

In order to show a violation of the Fourteenth Amendment Equal Protection Clause, Plaintiff must allege that Defendant Nwachukwa's conduct was motivated by discriminatory animus. *See* ***Washington v. Davis***, 426 U.S. 229, 239-42 (1976); *see also* ***Alexander v. Fulton County***, 207 F.3d 1303, 1314 n.6 (11th Cir. 2000); ***Standard v. A.B.E.L. Servs., Inc.***, 161 F.3d 1318, 1330 (11th Cir. 1998). Here, however, Plaintiff has failed to allege with any "specificity the facts which make out [her] claim." ***GJR Invs., Inc.***, 132 F.3d at 1367. At no point in her complaint does Plaintiff state a clear factual basis for her equal protection claim. Nor does she even state that Defendant Nwachukwa ever harbored any discriminatory intent. Plaintiff's complaint merely alleges that "defendants' action and inaction violated plaintiff's . . . equal protection rights under the Fourteenth Amendment," and there is no clear indication as to what the factual basis of her equal protection claim is. In fact, the only potential basis set out by the complaint is Plaintiff's allegation that Defendant Nwachukwa failed to call on her two times during the class but called on other males that day. This fact alone, however, does not come close to establishing an inference of discrimination; therefore, because the complaint fails to allege the violation of a currently cognizable right, Defendant Nwachukwa is entitled to qualified immunity. *See* ***Hartley***, 193 F.3d at 1151.

C. Injunctive Relief

Plaintiff also petitions the Court to enjoin Defendant Trustees from allowing Defendant Nwachukwa to commit future violations of her constitutional rights. However,

pursuant to the Court's request for further information at the oral arguments, the parties have stipulated that Defendant Nwachukwa is no longer employed by GMC. In light of this stipulation, the Court finds that Plaintiff's request for injunctive relief is now moot.

D. Georgia Tort Claims Act

1. Claim Against Defendant Trustees

Finally, Plaintiff seeks damages against Defendant Trustees under state law. Defendant Trustees responds that Plaintiff's claim in tort is barred by the GTCA. As this Court has previously recognized, the Eleventh Amendment prohibits suits against state entities and state officials acting in their official capacity in federal court for monetary relief, unless the state either consents to suit or waives its immunity. *See* ***Pennhurst State Sch. & Hosp. v. Halderman***, 465 U.S. 89, 99 (1984). In order for Plaintiff to obtain relief from Defendant Trustees, therefore, she must first demonstrate that the Georgia made "a clear declaration that it intends to submit itself to [federal] jurisdiction" and thereby waived any Eleventh Amendment immunity for such suits. ***College Savings Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.***, 527 U.S. 666, 676 (1999) (internal quotation marks omitted); *see also* ***Pennhurst State Sch. & Hosp.***, 465 U.S. at 99 (noting that this consent must be "unequivocally expressed"); ***Atascadero State Hosp. v. Scanlon***, 473 U.S. 234, 238 n.1 (1985). Georgia has made no such statement.

In its provisions concerning sovereign immunity, the Georgia Constitution provides, "no waiver of sovereign immunity under this Paragraph shall be construed as a

waiver of any immunity provided to the state or its departments, agencies, officers, or employees by the United States Constitution." Ga. Const. Art. I, § 2, ¶ 9(f). Rather, the Georgia Constitution places the power in the General Assembly to waive any immunity for suits involving torts of the state and state officers through the GTCA. Ga. Const. Art. I, § 2, ¶ 9(a); *see also* ***Northwest Ga. Reg'l Hosp. v. Wilkins***, 469 S.E.2d 786, 789 (Ga. Ct. App. 1996) (noting that the GTCA is the only "avenue for pursuing the state in a tort action"). However, the GTCA clearly states that "[t]he State does not waive any immunity with respect to actions brought in the courts of the United States." O.C.G.A. § 50-21-23(b) (1998). In light of these statutory and constitutional provisions, the Eleventh Amendment bars Plaintiff's state-law claims.

Plaintiff responds that there exists a genuine issue of material fact as to whether Defendant Trustees is a public corporation that is not closely controlled by the state. If this were the case, the Eleventh Amendment would not bar this tort claim. However, both the Eleventh Circuit and the Georgia courts have recognized GMC to be a state institution for purposes of determining whether action occurred under color of state law. *See* ***Satamorena v. Georgia Military Coll.***, 147 F.3d 1337, 1339-40 (11th Cir. 1997); ***Burell v. Board of Trs. of Ga. Military Coll.***, 970 F.2d 785 (11th Cir. 1992); ***Georgia Military Coll. v. Santamorena***, 514 S.E.2d 82, 84-85 (Ga. Ct. App. 1999). Furthermore, the Georgia Code provides that GMC is "a state-wide institution" with programs "subject to the availability of funds appropriated by the General assembly." O.C.G.A. § 20-3-560 (2001); *see also* ***Fouche v. Jeckyll Island-State Park Auth.***, 713 F.2d 1518, 1520-21 (11th Cir. 1983) (noting that a defendant, whose budget

and fiscal life were controlled by the Georgia General Assembly, was "an arm of the state protected by the Eleventh Amendment"). The Court therefore recognizes that GMC is an entity closely controlled by the state and "that a suit against it is effectively a suit against the state." ***Id.*** at 1522. Accordingly, Plaintiff's state-law tort claim is therefore barred by the Eleventh Amendment.

2. Claim Against Defendant Nwachukwa

Plaintiff also seeks relief from Defendant Nwachukwa for damages in tort. However, Plaintiff is met with the same roadblock that stands in the way of her tort claim against Defendant Trustees. The Georgia Code provides that the GTCA "constitutes the exclusive remedy for any tort committed by a state officer or employee." O.C.G.A. § 50-21-25(a) (1998). Here, Defendant Nwachukwa was a teacher employed by GMC, and the conduct in question took place during a business class taught by him. Because Defendant Nwachukwa was a state officer and acting within the scope of his official duties at the time of his tortious conduct, he is covered by the GTCA. As such, "only the state government entity for which the state officer or employee was acting," and not Defendant Nwachukwa himself, can be named as a party. O.C.G.A. § 50-21-25. Because Plaintiff cannot sue Defendant Nwachukwa individually, and because Defendant Trustee is protected by the Eleventh Amendment, Plaintiff's state law claims must be dismissed.

III. CONCLUSION

For the foregoing reasons, Defendant Nwachukwa's Motion to Dismiss is hereby **DENIED** with regard to

Plaintiff's claim under § 1983 for due process violations against him, in his individual capacity. As to all other claims, Defendants' Motions to Dismiss are **GRANTED**.

SO ORDERED, this 8th day of February, 2002.

/s/ Duross Fitzpatrick
DUROSS FITZPATRICK, JUDGE
UNITED STATES DISTRICT COURT

DF/scb

ATTACHMENT "C"

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-10960-FF

MELANIE LYDIA DACOSTA,

Plaintiff-Appellee,

versus

STANISLAUS NWACHUKWA, individually and in his official capacity as college instructor for Georgia Military College,

Defendant-Appellant.

On Appeal from the United States District Court
for the Middle District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC (Opinion _____, 11th Cir., 19___, ___ F.2d ___).

(Filed Oct. 10, 2002)

Before: CARNES, HULL and WILSON, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35,

Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Charles Wilson
UNITED STATES CIRCUIT
JUDGE